

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEANDREW LARONN MENEFEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48013

**FILED**

**MAR 01 2007**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to an Alford plea,<sup>1</sup> of one count of living from the earnings of a prostitute and one count of attempted use of a minor in the production of pornography. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant Leandrew Menefee to serve a prison term of 12 to 36 months for living from the earnings of a prostitute and a consecutive prison term of 36 to 120 months for attempted use of a minor in the production of pornography.

First, Menefee contends that the district court abused its discretion at sentencing by refusing to continue the hearing so that he could find new counsel to brief his motion to withdraw his guilty plea. The decision to grant or deny a motion to continue is left to the sound discretion of the district court and it will not be disturbed absent a clear abuse of discretion.<sup>2</sup> Here, Menefee claimed that a continuance was

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287, 1291 (1991); Walker v. State, 89 Nev. 281, 284, 510 P.2d 1365, 1367 (1973).

necessary because there was a conflict of interest in that he did not understand the impact of his plea and the way it was structured. He requested time to explore the possibility of withdrawing the plea with another attorney. After reviewing the plea canvass transcript, the district court concluded there was no reason to continue sentencing. The district court's decision was not an abuse of discretion.

Second, Menefee contends that district court violated his due process rights by basing its sentencing decision on his unwillingness to admit guilt.<sup>3</sup> "Imposition of a harsher sentence based upon the defendant's exercise of his constitutional rights is an abuse of discretion and the sentence cannot stand."<sup>4</sup> Menefee provided no factual support for this claim and there is nothing in the record to suggest that the district court sentenced Menefee more harshly because he pleaded guilty pursuant to Alford. We note that Menefee's sentence fell within the permissible range of punishment for the crimes of living from the earnings of a prostitute and attempted use of a minor in the production of pornography.<sup>5</sup> And we conclude that the district court did not abuse its discretion.

Third, Menefee contends that he was denied a fair sentencing due to prosecutorial misconduct. Menefee specifically claims that the

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<sup>3</sup>Menefee cites to Alford, 400 U.S. at 37.

<sup>4</sup>Bushnell v. State, 97 Nev. 591, 593, 637 P.2d 529, 531 (1981).

<sup>5</sup>See NRS 201.320(1) (living from the earnings of a prostitute is a category D felony); NRS 193.130(2)(d) (a category D felony is punished by imprisonment for a term of 1 to 4 years); NRS 200.710(1) (the use of a minor in the production of pornography is a category A felony); NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is punished by a prison term of 2 to 20 years).

prosecutor misstated testimony and presented a false version of the facts to obtain a harsher sentence. Menefee concedes that he did not object to the misconduct, but argues that it constitutes plain error.<sup>6</sup>

We have consistently afforded the district court wide discretion in its sentencing decisions.<sup>7</sup> "A sentencing court is privileged to consider facts and circumstances which would clearly not be admissible at trial."<sup>8</sup> However, we "will reverse a sentence if it is supported solely by impalpable and highly suspect evidence."<sup>9</sup>

Contrary to the State's assertions, the prosecutor in this case did not accurately summarize the victim's testimony. Instead, she misrepresented evidence adduced during the preliminary hearing by claiming that Menefee taught the victim prostitution and exposed her to a life that she otherwise would not have known, when in fact the victim testified that her girlfriend taught her prostitution and that she had engaged in prostitution before Menefee learned that she was doing so. While we conclude that the prosecutor's misrepresentations constitute

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<sup>6</sup>See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

<sup>7</sup>See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

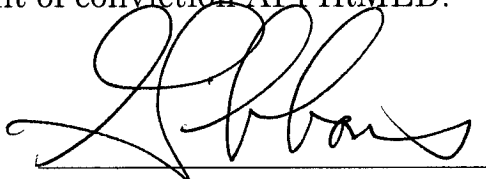
<sup>8</sup>Todd v. State, 113 Nev. 18, 25, 931 P.2d 721, 725 (1997) (quoting Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996)).

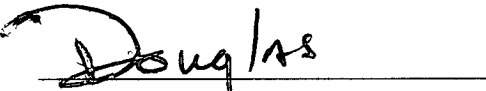
<sup>9</sup>Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (citing Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978), and Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)).

misconduct,<sup>10</sup> the district court also heard from the victim, defense counsel, and Menefee and there is no indication that the district court based its sentencing decision solely on the prosecutor's misrepresentations. Accordingly, Menefee is not entitled to relief on this claim.

Having considered Menefee's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. David Wall, District Judge  
Kajioka & Associates  
Ryan & Ciciliano, LLC  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>10</sup>Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987) ("A prosecutor may not argue facts or inferences not supported by the evidence.").